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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 17

JOHN PATRICK HENRY,
Petitioner.

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

EDWARD J. CALIHAN, JR.,
105 West Adams Street,
Chicago 3, Illinois,
Attorney for Petitioner.

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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, JOHN PATRICK HENRY, prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURT BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on January 24, 1958, and is not reported, but appears in the printed Appendix filed with, and certified by, the Clerk of the United States Court of Appeals as a part of the record, and transmitted herewith.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming said judgment, was filed October 2, 1958, and is not yet reported, but is set forth in the Appendix hereto, and in the certified copy of the record.

JURISDICTION.

The order of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was filed on October 2, 1958. On November 4, 1958, it was ordered that the petition for rehearing be denied. (These orders appear in the appendix hereto.) This petition is filed within thirty days of the denial of the petition for rehearing in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Was it not error for the Court of Appeals to sustain the ruling of the District Court, denying the defendant's motion to suppress the evidence, which was secured by agents of the Federal Bureau of Investigation, in violation of the defendant's rights under the Fourth Amendment to the Constitution of the United States?

2. Does the Fourth Amendment to the Constitution of the United States permit the stopping of an individual riding in a motor vehicle on the public highway, detention and questioning of said individual, search of the vehicle in which he is riding as a passenger, physical deprivation of his freedom of movement, without such conduct constituting an arrest? Is the arrest delayed or inchoate until the federal officers choose to inform him that he has been "formally" arrested some three hours after the original

detention, where the original stopping of the vehicle and detention of the person was without probable cause for an arrest or search?

(a) Will facts developed by the officers during the detention, and from it, justify this procedure?

3. Where armed agents of the Federal Bureau of Investigation have no warrant of arrest or search warrant, does their act of stopping an automobile, occupied by the driver and the petitioner, a passenger, traveling on a public thoroughfare in Chicago, Illinois, constitute an arrest, where the occupants of said automobile remained in continuous custody of the Federal Bureau of Investigation until their arraignment before the United States Commissioner on the following day?

4. Does such an arrest occur at the moment when the automobile is stopped by the compulsion of the government agents, or was the arrest delayed until following the stopping, when the questions asked of the occupants were not satisfactorily answered?

5. Where the United States Court of Appeals has distorted, by its interpretation of *Brinegar* v. *United States*, 338 U.S. 160 and *Carroll* v. *United States*, 267 U.S. 132, the meaning of these cases in order to sustain a search without warrant, and where no facts exist constituting probable cause to make an arrest, or to obtain a search warrant, should not this Court exercise its jurisdiction, on the principle that a search in law is good or bad when it starts, and does not change character from its success?

6. Where it appears from the evidence that the defendant, John Patrick Henry, was convicted solely on the government's evidence of his presence as a passenger in an automobile which contained stolen goods discovered

The Court set appeal bonds in the amount of $2,500.00.

The errors relied upon relate to the denial of the motions to suppress, and the sufficiency and, as to the defendant Henry, the weight of the evidence.

The United States Court of Appeals for the Seventh Circuit affirmed the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, and denied the defendant's (JOHN PATRICK HENRY's) petition for rehearing. (The defendant ALBERT RUDOLPH PIEROTTI is not a party to this appeal.)

STATEMENT OF FACTS.

On May 13, 1957 the defendants JOHN PATRICK HENRY and ALBERT RUDOLPH PIEROTTI were arrested by George Stadtmiller and John Oitzinger, agents of the Federal Bureau of Investigation. The agents were in the vicinity of 26th Street and Wallace Avenue, looking for leads to a "whiskey loss" of the Hayes Freight Line at 26th and Canal (App. 15-51). There was testimony that there were three or four FBI units in the area on the same assignment (App. 15-58). The agents first observed the defendants in a 1953 Ford automobile, driven by Mr. Pierotti (App. 12). The defendants were in an alley between Lowe St. and Union Avenue, and the alley ran from 26th to 28th Streets. The defendant Henry got out of the passenger side of the automobile, entered a gangway, and several minutes later, he returned to the automobile, carrying some cartons (App. 19). The agents were approximately 300 feet from the defendants. The defendants drove off in the automobile, and the agents lost track of them.

Several minutes later, the agents saw the automobile parked in the vicinity of the intersection of Wallace Avenue and 29th Street. The agents observed the two defend-

ants leave the Red Top Lounge, reenter the automobile and return to the alley, where they had first observed them. Again, the defendant Henry left the automobile, went into a gangway, and returned carrying several cartons. The defendants again drove off. The agents, upon this occasion, were approximately 300 feet away (App. 20). When questioned as to the size of the cartons, or any identification or markings, Agent Oitzinger stated he could not even tell the size from that distance, and was unable to identify them as being the cartons identified as government's exhibits 1, 2 and 3, containing the radios, which were alleged to have been stolen. Agent Oitzinger further testified that he could not even tell whether the defendant Henry was carrying groceries in the cartons (App. 58). Stadtmiller could not tell whether they were full or empty, nor could he read any description (App. 25).

After the defendants drove away, the agents again temporarily lost sight of them, and shortly thereafter observed the defendants in the 1953 Ford, driving south in the 2600 block of Wallace Avenue. The FBI agents were proceeding north on the same street. The agents thereupon drove directly, in a head-on manner, at the defendants in their 1953 Ford, and Agent Stadtmiller motioned for the defendants to stop with his hand out of the FBI automobile window. Both cars stopped, and the agents motioned the defendants out of the automobile (App. 21).

A search of the vehicle was thereupon made, and the cartons containing the radios, the subject matter of the indictment herein, were discovered. Even then, they were not sure of an offense (App. 68). The agents established that the defendants' possession of the vehicle was lawful. In the trunk of the vehicle was a carton of cleaning ma-

terial, which was subsequently shown not to have been stolen. The agents then took the defendants to the Chicago office of the FBI and, after several hours, determined that the radios had been taken from a motor truck of the Ziffrin Truck Lines. It was also established that the agents had called other truck lines to determine whether any truck line had suffered a radio loss (App. 16-17).

Thereafter, the defendants were *formally* placed under arrest — some time after 5 P. M. — or approximately three hours after they were first arrested on the street (App. 25, 63). The foregoing evidence was presented on the motion to suppress in which the defendants contended that there was no probable cause to make the arrest without warrant and incidental search. The trial court denied the motion.

At the trial of the case, the evidence adduced by the government may be summarized as follows:

A stipulation was entered into between the government and the defendants as to the interstate shipment; the value of the articles; that the articles were stolen on the date alleged in the indictment and from the place alleged in the indictment. The government also referred to the pleadings in which the defendants, by their motion to suppress, allege occupancy of the vehicle in which the articles were found, and by the amendment to the motion to suppress allege possession of the said articles (App. 35).

The following is a summary of the testimony of the witnesses:

Wilbur Holtz:

This witness stated that he saw JOHN PATRICK HENRY in Phil's Tavern at about 12 o'clock noon on May 13, 1957. The witness had been drinking since 7:30 in the morning, and asked the defendant Henry whether the defendant

knew where the witness could bet on a horse. Henry said he wasn't sure, but might be able to find out, and asked permission to use the witness' 1953 Ford, in which both defendants were later apprehended. The witness gave Henry the keys and Henry took the vehicle. This witness denied the presence of any cartons of radios in his vehicle (App. 36-39).

Wallace Nunes:

This witness said he was a dock hand at Ziffrin Truck Lines, and on May 13, 1957 was working with the defendant, ALBERT RUDOLPH PIEROTTI, who was also employed at said truck line. In addition to the defendant Pierotti, the witness said one Joe Teodorczyk was working with them, unloading cartons of radios. The trailer was completely loaded and checked by noon. The defendant Pierotti asked Nunes to punch his time card out at 2:30, even though Pierotti left the premises about 1:30. When Pierotti left the dock at 1:30, he was empty-handed (App. 39-45).

Joe Teodorczyk:

This witness testified that he was employed by the Ziffrin Truck Lines on May 13, 1957, and was working with Albert Rudolph Pierotti and Wallace Nunes in the loading of some cartons of radios on a Ziffrin trailer. This witness testified that he counted the cartons coming off of a Steffke trailer, from which the shipment was received, and on to the Ziffrin trailer across the dock. He stated that he counted them coming off of the Steffke trailer and all of them were placed on the Ziffrin trailer.

On cross examination, he stated that at least seven (7) persons had access to the Ziffrin trailer; which was loaded with additional material subsequent to the radio cartons being loaded (App. 45-51).

John Oitzinger:

This witness was an agent of the Federal Bureau of Investigation, who testified that he was assigned with Agent Stadtmiller to investigate the theft of whiskey from an interstate shipment of the Hayes Freight Line. He testified to the observation of the defendants, HENRY and PIEROTTI, as hereinbefore set forth. Apparently, Oitzinger conducted the questioning after the men were stopped, and Oitzinger determined at that time the ownership of the vehicle (App. 51-56).

Oitzinger admitted that at least four or five cars, with one or two agents, were in the vicinity, looking for leads to the Hayes whiskey loss (App. 57). When he first saw the defendants, he could not tell what size carton Henry was carrying (App. 58).

After Henry and Pierotti were arrested, Oitzinger also stopped one Bedalow, who was driving a 1946 Ford sedan. Oitzinger said that this man was stopped merely because he was seen talking to Henry and Pierotti in front of the Red Top Lounge (App. 60).

Oitzinger said that he had no warrant for the arrest of either Henry or Pierotti (App. 63).

Upon cross-examination, when asked whether the defendants were in violation of any law, so far as the agents knew, at the time the agents observed the defendants, the question was objected to and sustained by the Court (App. 63).

This witness also testified that a search of the vehicle in which the defendants were riding was made by Agent Stadtmiller (App. 67). After Agent Stadtmiller took the three cartons out of the defendants' automobile, the witness said:

"There is something wrong here, this isn't right. Let's go down to our office." (App. 68).

The government thereupon rested, after introducing the cartons of radios (App. 69).

The defendants offered no evidence, and moved for a judgment of acquittal. After argument, said motion was denied.

REASONS FOR GRANTING THE WRIT.

This Court should exercise its jurisdiction in this case for the following reasons:

I) There is involved herein an important question of federal law which has not been, but should be settled by this Court.

II) If *United States* v. *Di Re*, 332 U.S. 581, 595, may be decisive, then the decision of the Court of Appeals below is in conflict with such decision of this Court.

III) The decision of the Court of Appeals below is in conflict with the leading State of Illinois case on the subject which, because it involves arrest without warrant, is dependent for validity on state law. *United States* v. *Di Re*, 332 U.S. 581; *Johnson* v. *United States*, 333 U.S. 10.

IV) The Court of Appeals below has so far sanctioned a departure from the accepted and usual course of judicial proceedings by a lower Court as to call for an exercise of this Court's supervision, by affirming a conviction for a knowing and wilful violation of the law, in a case where there was no proof of such knowing and wilful violation established before the District Court nor the Court of Appeals, both Courts having relied upon an improper interpretation of a so-called presumption, to the effect that unexplained possession of recently stolen goods will authorize a conviction.

I.

The important question of federal law which should be settled by this Court is: Does the act of stopping an automobile, traveling on a public highway, then and there constitute an arrest? The significance of the moment of arrest is bottomed on the principles of the Fourth Amendment to the Constitution of the United States, which define the rights of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. This search and seizure was claimed to be incidental to arrest, and the principal questions here presented are: 1) At what point did the arrest occur? and 2) Was the evidence discovered after the arrest? The time of arrest and therefore the validity of the evidence secured thereby is crucial because the motion to suppress such evidence, upon which the conviction is based, was denied below.

The evidence demonstrates that the agents of the Federal Bureau of Investigation drove headlong at the defendants' automobile, each car then traveling in an opposite direction, and motioned the petitioner and the driver of the automobile to stop and get out of the car. The petitioner stated, "Hold it! It's the G." (App. 23).

If the arrest occurred at that point, as the petitioner contends, then the subsequent finding of the radios, which were the subject of the indictment herein, could not make good the original arrest. The agents, in calling upon the defendants to stop their vehicle, did so by virtue of their official position. The evidence is such that the agents testified that the defendants knew they were federal officers (App. 54). The compulsion exercised by these officers then and there, in depriving the defendants of their freedom of proceeding along a public highway, constituted an arrest. These agents were armed men, ordering the de-

fendants to stop, and they blocked the way of the defendants with their car. The petitioner contends that the restraint of his freedom of locomotion, thus inducing a reasonable apprehension that force would be used, unless there were submission, constitutes an arrest. It is enough to constitute an arrest, if the conduct of the officers operates on the will of the persons threatened, and results in a reasonable fear of personal difficulty or personal injury.

Therefore, if, as the petitioner contends, the arrest took place at the point of stopping, any subsequent look into the automobile, or questioning of the occupants, even if only a short time later, was an incident to the arrest. If probable cause did not exist prior to the finding of the cartons of radios, the subsequent finding cannot save the arrest.

The only case the petitioner has been able to find which in any way approaches the problem is *United States* v. *Hanley*, 50 F. 2d 465, (D.C.N.Y.), where the Court stated:

> "I find that they, without probable cause, stopped the automobile, ordered its driver to pull up to the curb, and then boarded it. If thereafter the driver told them the truck contained beer, he did so under coercion, and after the search and seizure had commenced."

The motion to suppress was granted in the foregoing case.

The basic question here, as to when an arrest occurs, has never been specifically decided by this Court, to the best of the petitioner's knowledge. It is respectfully urged that such a question—particularly, where the means and speed of locomotion have advanced so rapidly since the turn of the century—is vital for the guidance of law enforcement agencies and the protection of rights of citizens under the Fourth Amendment to the Constitution of the United States.

II.

This Court has stated, in *United States* v. *Di Re*, (1948) 332 U.S. 581, 595:

> "In law, it is good or bad when it starts, and does not change character from its success."

In connection with the problem here, the majority opinion of the Court of Appeals below stated in its opinion: (App. 5a-6a)

> "* * * the facts within the agents' knowledge amounted to more than mere suspicion and constituted probable cause for their action in stopping appellants' car.
>
> "The arrest and taking into custody of appellants followed the discovery of the cartons of radios bearing the shipping labels indicating that they were part of an interstate shipment and the far from satisfactory explanation by appellants in regard to the ownership of the cartons. * * * The agents on finding the cartons of radios in the car had reasonable ground to believe that the felony of illegal possession of goods stolen from an interstate shipment was then being committed and the arrest was therefore valid. * * *"

On the other hand, the dissenting opinion (App. 9a-10a) states:

> "Again we say there is no evidence of personal knowledge by the federal agents here that the defendants or either of them could have been suspected of interstate shipment thefts at the time the path of their car was intercepted by the agents and they were arrested and taken into custody. It was at that time probable cause had to exist for when their car was stopped by the agents intercepting its path and driving directly in front of them and making a head-on stop I think the arresting officers were then in the position of an officer who has entered a home; *i.e.*, the search at that time had to be valid and could not be saved by what it later uncovered.

> "In my opinion the search of defendants' automobile was in clear violation of the Fourth Amendment. I would, therefore, reverse and remand with instructions to sustain the motions to suppress."

Parenthetically, it should be noted at this point that the dissenting opinion makes the following observation pertinent to part I of this portion of the petition: (App. 7a)

> "Counsel for the Government stated in oral argument before this court that when the federal agents stopped the defendants' car the arrest of the defendants occurred right then and there. Thus it is clear that unless the agents had probable cause to *then* believe that the defendants had committed a felony cognizable under the laws of the United States that arrest was not a valid one and any search incident thereto was unlawful. The search at its commencement must be valid and cannot be saved by what it turns up. 'In law it is good or bad when it starts and does not change character from its success.' *U. S. v. Di Re*, 1948, 332 U.S. 581, 595."

It is therefore our position that the point of arrest is vital. The Court of Appeals below, in its majority opinion, has indicated one standard for stopping the automobile, and another standard for making the arrest. In other words, it appears that the agents may have had a suspicion that something was amiss, and thus, this suspicion could justify the stopping of the motor vehicle. Inherent in their opinion is the recognition that, by no stretch of the imagination, could the reasonably prudent agents have concluded that a federal offense was being committed. The Court of Appeals below, therefore, attempts to say in one paragraph of its opinion that the agents had probable cause to stop the vehicle. In the next paragraph, having stopped the vehicle, and having found that answers to their questions were not satisfactory, and having examined cer-

tain cartons, and having made a three-hour investigation as to the nature of the packages, which ultimately resulted in evidence that the packages had recently been stolen, the Court of Appeals has concluded that the agents had probable cause to make such an arrest. The opinion indicates that the initial arrest was made *after* the discovery of the cartons, and *after* the far from satisfactory explanation, and that the *formal arrest* occurred some three hours later in the offices of the Federal Bureau of Investigation. It is interesting to note that, even after the finding of the cartons of the radios in the automobile, Agent Oitzinger said (App. 68):

> "* * * I told them that 'there is something wrong here, this isn't right.' I said, 'Let's go down to our office.'"

It is the petitioner's further assertion that this Court, in *Giordenello v. United States*, 78 S. Ct. 1245, has recently reaffirmed the holding of *United States v. Di Re*, 332 U.S. 581 and *United States v. Rabinowitz*, 339 U.S. 56. For the Court of Appeals below to contend that the arrest can follow the actual restraint of the individual, who has been continuously in the custody of the Federal Bureau of Investigation from the point of the stopping of the automobile to the arraignment before the United States Commissioner on the following day, is in direct conflict with the above-cited cases.

III.

The petitioner has quoted hereinabove portions of the majority opinion of the Court of Appeals below. It is next contended that said opinion is in conflict with the leading case in the State of Illinois on the subject of when an arrest occurs. This case is *People v. Mirbelli*, 236 Ill. App. 533. It is respectfully submitted that, on the point

involved herein, this is recognized and followed as authority in Illinois. The case holds:

> "In the instant case the People contend that 'defendant was not arrested until after officers viewed the concealed weapon on his person.' On the other hand, defendant strenuously contends that he was arrested when the officers, with drawn weapons, 'hollered' to him to 'stick them up, we are police officers, stick them up,' and he complied with that order.
>
> "'The word (arrest) is "derived from the French, arreter, to stop or stay, and signifies a restraint of a man's person; depriving him of his own will and liberty, and binding him to become obedient to the will of the law. It is called the beginning of imprisonment." *Legrand* v. *Bodinger*, 4 T. B. Mon. (Ky.) 539, 540.' (5 C. J. 385.)
>
> "'An arrest consists in taking, under real or assumed authority, custody of another person for the purpose of holding or detaining him to answer a criminal charge or civil demand. . . . The custody or control, the assumption of which is involved in an arrest, imports actual restraint or detention, the mere utterance of words indicative of an arrest being insufficient, except perhaps when followed by submission . . . An arrest is not consummated until there has been a taking of possession of the person by manual caption or otherwise, but the requisite control may be assumed without force, and in any manner by which the subject of the arrest is brought within the power or control of the person making it. Nor is manual touching necessary, where the subject of the arrest submits thereto or is otherwise actually subjected to restraint. But, where the person resists arrest, some manual touching of the body has been held necessary to consummate the arrest.' (5 C.J. 385-6.)
>
> "'An arrest is the taking of a person into the custody of the law. It has also been judicially defined

as the taking, seizing, or detaining the person of another; touching or putting hands upon him, in the execution of process, or any act indicating an intention to arrest. . . . An arrest, in the strict legal sense of the term, involves three elements: *authority, intention, and a restraint of the person.* . . . There must be an intention, understood by the one arrested, to accomplish the arrest. . . . *A restriction of the right of locomotion is the most characteristic element of the arrest.* . . . An arrest is effected when the party is brought within the power of the officer, an actual manual touching not being essential.' (2 Am. & Eng. Ency. of Law [2d ed.] 834-6.)"

People v. *Mirbelle*, 276 Ill. App. 533, 540-541 (Emphasis supplied.)

In the case at bar, the arrest of the petitioner Henry occurred when his right to proceed along the public way was impeded. In this, we have the restriction of his right of locomotion. Next, he submitted to the authority of the arresting officers, and his acknowledgment of this is found in his words: "Hold it, it's the G." Lastly, the intention of the armed agents of the Federal Bureau of Investigation, driving headlong at the automobile occupied by the petitioner, indicates an intention to arrest. We respectfully invite this Court's speculation as to what would have occurred, had the defendants attempted to flee. Did the petitioner and his companion, therefore, have to risk being shot, or seriously injured by ramming, in order to prove the point of arrest? *United States* v. *Di Re*, 332 U.S. 581.

It would appear from the facts involved in this case that the Federal Bureau of Investigation was conducting a dragnet operation in the neighborhood in which the defendants were arrested. The agents and others apparently stopped and searched individuals, other than the petitioner,

with negative results. One Steve Bedlow was stopped by these agents, merely because he was seen talking to the defendants (App. 60). We can only speculate as to how many other people were subjected to this treatment.

The far-reaching effect of any stamp of approval by federal courts of this conduct will set a dangerous precedent for law-abiding citizens of this community. In Chicago, Illinois it is a well-known fact that the Police Commissioner has established what are known as "task forces", consisting of approximately one hundred and fifty local police officers, mounted on three-wheeled motorcycles. These "task forces" sweep into areas, and stop motorists on little or no pretext, with a view toward making searches and seizures of any and all articles found.

It seems apparent that the Federal Bureau of Investigation, upon notice that an amount of whiskey had been high-jacked, sent in a similar "task force" consisting of at least four units, to seek "leads" to said losses. These agents were embarked upon a course of conduct, designed to ferret out some clue to the whereabouts of the whiskey stolen, or the culprits involved therewith. It is the petitioner's contention that, quite by chance, these articles were found in the automobile in which he was riding as a passenger, and that the facts and circumstances existing —prior to the stopping of the vehicle— could by no stretch of the imagination lead the agents to conclude that a "federal offense" had been, or was being, committed. Nor were there any reasonable grounds so to believe. Even the Court of Appeals below does not state that what occurred prior to the stopping of the vehicle constituted reasonable grounds to arrest for a "federal offense." Their only conclusion was that it might afford grounds for stopping the automobile.

This concept conflicts with Illinois law on the subject. Therefore, this Court ought to exercise its jurisdiction.

IV.

The last reason why this Court ought to exercise its jurisdiction is based on the fact that the decision of the Court of Appeals below has sanctioned a departure from the accepted and usual course of judicial proceedings by a lower Court. The departure involves the affirmance of a conviction in which proof of a knowing and wilful violation must be established. It is the petitioner's contention that no such proof was made, but that both the District Court and the Court of Appeals below relied upon an improper interpretation of the presumption of unexplained possession of recently stolen goods. This presumption does not require an explanation from the petitioner, who did not take the stand in his own behalf. The explanation may be adduced from the facts presented by the government. The requirement that the petitioner must explain is erroneous. It is upon this requirement that the Courts below based the conviction.

The petitioner Henry makes the following observations with reference to the Court of Appeals' determination that as a matter of law, the evidence was sufficient to support a conviction as to him.

The Court of Appeals below, on this point in its opinion, at pp. 6 and 7, states as follows:

> " * * * However, in this case the record shows further that the car in which appellants were driving had been borrowed by Henry from one Wilbur Holtz who denied the presence of the cartons in his car at the time Henry took the vehicle. At the time they were stopped and questioned Pierotti untruthfully asserted that the car had been loaned to him. Agent Oitszinger testified of his observations of appellants'

> conduct set forth elsewhere in this opinion which shows clearly that Henry exercised dominion over the cartons completely inconsistent with the attempted explanation at the time of his arrest that the cartons were in the car when he got into it and that he did not know whom they belonged to. * * *"

The foregoing, then, is the basis upon which the Court of Appeals found sufficiency of the evidence.

Let us examine the Court of Appeals' statement a little more closely: First of all, "Pierotti untruthfully asserted that the car had been loaned to him." What effect can this statement of Pierotti's have possibly had upon the guilt of Henry, who, admittedly, had been drinking in various taverns since 7:30 that morning and who quite possibly was in no condition to drive. We respectfully submit that, under these circumstances, Henry had no obligation and maybe no ability to comment upon Pierotti's statement. This is not the case where a defendant, having been accused of something, and remaining mute, can be regarded as having admitted the truth of the accusation. By this statement, Pierotti cannot lift the connection between himself and Henry to the dignity of a conspiracy, thus binding Henry.

The opinion states that the petitioner Henry exercised dominion over the cartons. The record will disclose that neither of the two agents upon being asked directly could in any way *identify the cartons*, Govt. Ex. 1, 2, and 3, containing the radios, as being the same cartons Henry was observed to have carried out of the gangway into the automobile. The Court of Appeals cannot supply that evidence. The further portion of the Court's opinion that: "* * * the attempted explanation at the time of his arrest that the cartons were in the car when he got into it * * *" is not Henry's statement. It is that of Pierotti.

Reference is made to p. 3 of the Court's own opinion, wherein Agent Stadtmiller testified as to what Pierotti said.

Henry, on this record, said only two things:

1. "Hold it, it's the G!" and

2. "Tell them you just picked me up."

Statement 1 indicates a submission to the authority of the Federal Bureau of Investigation. Statement 2 is an indication that Henry had only been with Pierotti a short time, and this is borne out by the record. The proof clearly shows that at the time Pierotti was handling the merchandise in question, the petitioner Henry was either engaged in partaking of alcoholic refreshment, or looking after his interest in the Sport of Kings.

The petitioner is not unaware of the fact that, in reviewing the guilt or innocence of the accused, the Court of Appeals must view the record in the light most favorable to the government. However, this never precludes the review of circumstantial evidence. It cannot be assumed that, when circumstantial evidence is relied upon by the government as proof of the guilt of a person, such evidence must be viewed only in favor of the government's case. The petitioner Henry relies on the great weight of authority that, in viewing circumstantial evidence, this sort of evidence must exclude every reasonable hypothesis, other than that of guilt. To this end, the petitioner Henry respectfully submits a reasonable hypothesis of innocence. That the District Court and the Court of Appeals disregarded this hypothesis, he now claims as error. In *Kassin* v. *United States*, 87 F.2d 183, 184, the Court stated that circumstances which merely raise suspicion or give room for conjecture are not sufficient evidence of guilt and, where circumstantial evidence

is relied upon, " . . . the links in the chain must be clearly proven, and taken together, must point not to the possibility or probability, but to the moral certainty of guilt." (P. 187).

With this in mind, we invite this Court's attention to the circumstantial evidence which, we urge, clearly points to innocence. Without dispute, the following facts may be enumerated:

1. The petitioner Henry had been drinking in a tavern since 7:30 in the morning with the government's witness, Holtz.

2. At noon, Holtz asked the petitioner Henry if Henry knew where he could get a bet placed on a horse race.

3. The weather was bad, and Holtz loaned Henry the use of his automobile.

4. Pierotti was working on the dock of the Ziffrin Truck Lines and, by happenstance, handled the stolen radios sometime *in the forenoon*.

5. Pierotti left the dock at 1:30 P.M. and is next observed in the company of Henry at the Red Top Lounge at 2:10 P. M.

6. They are together in the automobile until about 2:40.

7. When arrested, Henry said only two things: "Hold it, it's the G." and "Tell them you just picked me up."

From the foregoing, the more reasonable hypothesis is that the petitioner Henry spent all of the forenoon at Phil's Tavern, drinking with one of the government's witnesses, Holtz. When Holtz indicated that he wanted

to bet on a horse race, Henry left Phil's Tavern in Holtz's automobile to see if he could place the bet. Apparently, in his visits to various places, he met the co-defendant Pierotti at the Red Top Lounge.

Quite independently of Henry on these facts, Pierotti had managed to get his hands on the radios, which he had handled at his place of employment. These radios were loaded in the morning, before noon (App. 43), at the time when Henry was drinking with the government witness, Holtz.

It would appear from the facts that, upon meeting Henry at the Red Top Lounge, Pierotti asked if Henry had any transportation. Henry probably said, "Yes," and Pierotti asked if he could run a short errand. Pierotti drove and possibly, quite properly so, in view of the defendant Henry's all day drinking. There is absolutely no proof whatever—on the record or circumstantially—other than the fact that Henry was in the vehicle with the stolen property, that suggests his guilt.

His admission of a possessory interest in the stolen goods was made under circumstances which can only give rise to the conclusion that it was admitted for the sole purpose of asserting his constitutional rights under the Fourth Amendment.

In conclusion, it is the petitioner's observation that, other than association with Pierotti, the government is without sufficient proof. At the beginning of this portion of the petition it was pointed out that the untruthful statements were made by Pierotti; that Henry did not exercise dominion over any cartons identified as Government's Exhibits 1, 2, and 3; and that Henry was not the one who said the cartons were in the car when he got into it. This was Pierotti's statement. We are back,

then, to what the Court of Appeals below said at p. 6 of the opinion: (App. 6a)

> "' ' ' If, as appellant Henry contends, the government's case had been based solely on the fact of his presence in the car which contained the stolen goods and his association with the other defendant, the government would have failed to prove unlawful and knowing possession on his part. *United States* v. *O'Brien*, 7 Cir., 174 F.2d 341, 344 (1949). ' ' '"

It is for this alone association that Henry stands convicted. We urge a ruling by this Court consistent with *United States* v. *O'Brien* (*supra*), *United States* v. *Caruso*, 198 F. 2d 3; *United States* v. *Wainer*, 170 F. 2d 603.

Moreover, if guilt be inferred from the evidence in this case, it must be inferred from circumstantial evidence. However, the circumstances must be such as to exclude every reasonable hypothesis, other than that of guilt. *Copeland* v. *United States*, 5 Cir., 90 F. 2d 78, 79 (1937); *Touchin* v. *United States*, 10 Cir., 93 F. 2d 861, 866 (1938); and where those circumstances are as consistent with innocence as with guilt, they have no probative value. *Tingle* v. *United States*, 8 Cir., 38 F. 2d 573, 575 (1930). Similarly, circumstances which merely raise suspicion or give room for conjecture are not sufficient evidence of guilt. *Kassin* v. *United States*, 5 Cir., 87 F. 2d 183, 184 (1937). In *Kassin*, the Court observed that where circumstantial evidence is relied upon, ". . . the links in the chain must be clearly proven, and taken together, must point not to the possibility or probability, but to the moral certainty of guilt." (P. 187.)

For all of the foregoing reasons, the petitioner urges on this point that the Court of Appeals below has sanctioned a departure from the accepted and usual course of judicial proceedings in the Court below.

CONCLUSION.

Wherefore, for the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

EDWARD J. CALIHAN, JR.,
Attorney for Petitioner

APPENDIX.

In The

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

No. 12306 — SEPTEMBER TERM AND SESSION, 1958

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JOHN PATRICK HENRY and
ALBERT RUDOLPH PIEROTTI,
Defendant-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OCTOBER 2, 1958

Before DUFFY, *Chief Judge*, HASTINGS and PARKINSON, *Circuit Judges*.

HASTINGS, *Circuit Judge*. Appellants, John Patrick Henry and Albert Rudolph Pierotti, were convicted under a one-count indictment charging them with the unlawful possession, in violation of Title 18 U.S.C.A. § 659, of three cartons of radios stolen from an interstate shipment. This appeal is based on alleged errors of the trial court in overruling the motions of both appellants to suppress evidence used in this cause and in its denial of appellant Henry's motion for a judgment of acquittal.

It is appellants' contention that the pre-trial hearing on their motions to suppress established that they were the victims of an unlawful arrest and search without warrant by agents of the Federal Bureau of Investigation and

that, consequently, the evidence uncovered in the search, the three cartons of radios, should properly have been suppressed.

George Stadtmiller, one of the two Federal agents who arrested appellants, was the only witness called by appellants in support of their motions to suppress and was, indeed, the sole witness in the pre-trial hearing on the motions. From his testimony are found the following facts: Agent Stadtmiller and Agent John J. Oitszinger who accompanied him were, on the day of the arrest, May 14, 1957, investigating leads to a reported theft of whiskey from the Hayes Freight Lines located in Chicago, Illinois, which had occurred the night before. Stadtmiller indicated that he was acquainted with both appellants, (although he was not asked to explain in what connection he knew them) and also testified that he had received information concerning the "*implication* of defendant Pierotti with interstate shipments," this information purportedly coming from a Mr. Lieberman, vice president of the Ziffrin Truck Lines and employer of Pierotti. There is no indication in the record in what manner Pierotti was so implicated.

Appellants were first observed by the agents, on the day of the arrest, emerging from the Red Top Lounge located at 2903 South Wallace Street, Chicago, Illinois, at about 2:10 p.m. They then walked to a 1953 two-door black and white Ford parked across the street and, with Pierotti driving, were observed to travel by a rather indirect route to an alley between Union and Lowe streets. The agents, who had followed, parked their car, walked to the end of the alley and observed Henry leave the car occupied by appellants and enter a gangway. Henry returned in about two minutes carrying some cartons which he placed in the car. Appellants drove off and were lost to the view of the agents. The agents then returned to their car and drove through various streets looking for appellants' car which they finally located parked in its original position opposite the Red Top Lounge on Wal-

lace Street. The agents parked nearby and shortly thereafter observed Henry and Pierotti leave the Lounge. After engaging in conversation with a man known to the agents as Steve Bellow, appellants returned to their car and drove back to the same alley where Henry was again observed getting out of the car, entering the gangway and returning shortly carrying some more cartons which he again placed in the car. The agents saw all this at a distance of some 300 feet and could not have known at that time the contents of the cartons, their number or size. Appellants then drove away, followed by the agents, and a few minutes later at about 2:50 p.m. were intercepted by the agents who motioned them to stop as the two cars approached each other traveling along Wallace Street. Henry got out of the car leaving the car door open and approached the agents. He was overheard to say to Pierotti: "Hold it. It's the G's," and "Tell him he [you?] just picked me up." The three cartons bearing shipping labels which indicated they were part of an interstate shipment *were plainly visible to Agent Stadtmiller through the open door of the car.*

Stadtmiller testified further that:

> "... We asked them about the ownership of the car, and Mr. Pierotti said it wasn't his car, and he said it was Babe's car, and that he had borrowed it. And we asked him about the cartons that were in the car, and he said that they were in the car when he ...
>
> "The Court: Just a minute. All right, go ahead.
>
> "By the Witness:
>
> "A. (Continuing) We asked him about the cartons that were in the car, and he said that they were in the car at the time he borrowed it from the owner.
>
> "Q. What, if anything, else was said by you to the defendants and by the defendants to you at that time and place?
>
> "A. Well, after they said, after Mr. Pierotti said the cartons were in the car at the time he borrowed it, we asked them if they had just been at the Red

Top Lounge, and Mr. Henry said that he may have been earlier that day as he was visiting numerous taverns. Mr. Pierotti said he had just got off work at 2:30:

"Q. Do you know of your own knowledge whether or not that was correct?

"A. Well, I had seen him at 2:10 away from work."

Appellants were then taken into custody. It was ultimately determined, between 4:30 and 5:00 p.m. of that day, that the cartons in question had been stolen from a motor truck of the Ziffrin Truck Lines, and appellants were then *officially informed* that they were under arrest and of the charges against them.

Appellants raise the contention that the stopping of their car and resulting discovery of the cartons of radios plainly visible through the open door of the car was an unlawful search. Under the Fourth Amendment to the Constitution a lawful search of a car moving on a public thoroughfare may be had without a warrant providing probable cause for the search exists. *Brinegar* v. *United States*, 338 U.S. 160 (1949); *Carroll* v. *United States*, 267 U.S. 132 (1925).

The Supreme Court of the United States in the *Carroll* case observed that:

> "On reason and authority the rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction the search and seizure is valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when adopted, and in a manner which will conserve public interests as well as the rights of individual citizens.
>
> . . .
>
> "The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid

> the payment thereof, are totally different things from a search for and seizure of a man's private books or papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ *toto cœlo*. In one case the Government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common law. . . ."
> *Carroll* v. *United States*, *supra* at 149-150

In the *Brinegar* case the Supreme Court stated that probable cause "has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the officers] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense is being committed." *Brinegar* v. *United States*, *supra* at 175-176.

This court has defined probable cause as "reasonable grounds of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged . . . [A]nd what constitutes probable cause must be determined from the standpoint of the officer with his skill and knowledge, rather than from the standpoint of the average citizen under similar circumstances." *United States* v. *Scho*, 7 Cir., 101 F. 2d 889, 890 (1939). The agent need not have legal evidence of a suspected illegal act. *Brinegar* v. *United States*, *supra* at 174-175; *Gilliam* v. *United States*, 6 Cir., 189 F. 2d 321, 323 (1951). It is only necessary that the facts and attendant circumstances are such as would lead a reasonably prudent man to believe that articles are illegally possessed in the automobile to be searched. *Husty* v. *United States*, 282 U.S. 694, 701 (1931).

We hold that there existed probable cause for the search in this case. The agents, while investigating for leads to a reported theft of whiskey which had occurred the previous night, observed appellants' unusual behavior

set forth above. Both appellants were known to the agents, and appellant Pierotti known by them to be involved or implicated in interstate shipments in some manner. As in the *Brinegar* and *Carroll* cases, no problem of search of a home or other place of privacy is involved. These cases involve the freedom to use public thoroughfares in swiftly moving vehicles for dealing in contraband. Not every traveler may be stopped and searched at an officer's whim or mere suspicion, but it is clear that here the facts within the agents' knowledge amounted to more than mere suspicion and constituted probable cause for their action in stopping appellants' car.

The arrest and taking into custody of appellants followed the discovery of the cartons of radios bearing the shipping labels indicating that they were part of an interstate shipment and the far from satisfactory explanation by appellants in regard to the ownership of the cartons. Agents of the Federal Bureau of Investigation are empowered by statute to "make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have *reasonable grounds to believe that the person to be arrested has committed or is committing such felony.*" (Our emphasis.) 18 U.S.C.A. 3052. The agents on finding the cartons of radios in the car had reasonable ground to believe that the felony of illegal possession of goods stolen from an interstate shipment was then being committed and the arrest was therefore valid. See *Bell* v. *United States*, D.C. Cir., 254 F. 2d 82 (1958); *Walker* v. *United States*, 7 Cir., 246 F. 2d 518 (1957); and *Gilliam* v. *United States*, 6 Cir., 189 F. 2d 321 (1951). The fact that there had been no reported theft of radios from an interstate shipment cannot be seriously considered as an indication that the agents acted without "reasonable grounds." An arresting officer deals in probabilities, not certainties and not necessarily eventual truth. *Brinegar* v. *United States*, *supra* at 176; *Bell* v. *United States*, *supra* at 86. The trial court properly denied appellants' motion to suppress.

Appellant Henry contends further that, as a matter of law, the evidence was not of sufficient weight to support a conviction as to him and that, therefore, the trial court erred in denying his motion for judgment of acquittal. In considering appellant's contention in this regard this court may not weigh the evidence nor determine the guilt or innocence of the accused and must view the record in the light most favorable to the government. *Glasser* v. *United States*, 315 U.S. 60, 80 (1942); *Grieg* v. *United States*, 7 Cir., 246 F. 2d 155, 157 (1957); *United States* v. *Iacullo*, 7 Cir., 226 F. 2d 788, 795 (1955). If, as appellant Henry contends, the government's case had been based solely on the fact of his presence in the car which contained the stolen goods and his association with the other defendant, the government would have failed to prove unlawful and knowing possession on his part. *United States* v. *O'Brien*, 7 Cir., 174 F. 2d 341, 344 (1949). However, in this case the record shows further that the car in which appellants were driving had been borrowed by Henry from one Wilbur Holtz who denied the presence of the cartons in his car at the time Henry took the vehicle. At the time they were stopped and questioned Pierotti untruthfully asserted that the car had been loaned to him. Agent Oitszinger testified of his observations of appellants' conduct set forth elsewhere in this opinion which shows clearly that Henry exercised dominion over the cartons completely inconsistent with the attempted explanation at the time of his arrest that the cartons were in the car when he got into it and that he did not know whom they belonged to. This court held in *Wilkerson* v. *United States*, 7 Cir., 41 F. 2d 654, 657, (1930) that:

> "Possession of the fruits of crime recently after its commission justifies the inference that the possession is guilty possession, and, though only *prima facie* evidence of guilt, may be of controlling weight unless explained by the circumstances or accounted for in some way consistent with innocence."

We hold that the evidence supports the conviction of Henry and that the trial court did not err in denying his motion for judgment of acquittal.

The judgment of the district court is

AFFIRMED.

PARKINSON, *Circuit Judge*, dissenting.

In order to sustain the judgment of conviction in this case the Government is obliged to justify the search as being incident to a lawful arrest. This it cannot do and I am, therefore, compelled to dissent.

On the day of the arrest federal agents were investigating leads to a whiskey loss from the Hayes Freight Lines which had occurred the night before. Agents Stadtmiller and Oitszinger were in a car so engaged. The defendants "were driving south in the 2600 block on Wallace, and we (the agents) were headed north, and we (the agents) intercepted their path." The agents "drove directly in front of" the car in which the defendants were riding and made "a head-on stop".

Counsel for the Government stated in oral argument before this court that when the federal agents stopped the defendants' car the arrest of the defendants occurred right then and there. Thus it is clear that unless the agents had probable cause to *then* believe that the defendants had committed a felony cognizable under the laws of the United States that arrest was not a valid one and any search incident thereto was unlawful. The search at its commencement must be valid and cannot be saved by what it turns up. "In law it is good or bad when it starts and does not change character from its success." *U.S. v. Di Re*, 1948, 332 U.S. 581, 595.

The parties are in agreement that probable cause means more than bare suspicion. The Government's contention that there was probable cause to arrest the defendants when the federal agents stopped defendants' car is based solely upon three factors: 1. the defendants were seen carrying cartons, the number, size and contents of which were completely unknown to the agents, which the defendants placed in the back of their automobile; 2. the agents were "acquainted" with the defendants; and 3. a Mr. Lieberman, vice-president of Ziffrin Truck Lines, for which the defendant Pierotti worked, had told Agent Stadtmiller that Pierotti had been "implicated" with interstate shipments.

QUESTIONS PRESENTED

1. Whether there was probable cause to stop a motor vehicle in which stolen property was discovered.

2. Whether the evidence supported petitioner's conviction.

STATEMENT

On January 24, 1958 petitioner (together with a co-defendant, Albert Pierotti) was convicted by the trial court without a jury (R. 35) of the unlawful possession of three cartons of radios stolen from an interstate shipment (18 U.S.C. 659) (R. 72). Petitioner was sentenced to imprisonment for a year and a day (R. 72).

1. Before trial, petitioner filed a motion to suppress as evidence the three cartons of radios taken from his possession by F.B.I. agents (R. 7-9), contending that the articles were obtained by an illegal search and seizure (R. 8). In support of this contention in a pre-trial hearing, petitioner introduced the testimony of George Stadtmiller, one of the F.B.I. agents who seized the cartons of radios. Agent Stadtmiller's testimony showed that he and another agent, John Oitszinger, were, on the day of the arrest, May 13, 1957, investigating leads to a reported theft of whiskey from a freight line in Chicago (R. 16). Stadtmiller stated that he was acquainted with petitioner and Pierotti and that he knew from Pierotti's employer of Pierotti's "implication * * * with interstate shipments" (R. 21, 22). Petitioner and Pierotti were first observed by the agents at 2:10 p.m. across the

Again in oral argument before this court the Government admitted that it could not explain what had been meant by the words "acquainted" and "implicated". It has not been argued, nor from this record could it be so argued, that any connotation unfavorable to defendants must or should be placed upon these words. They stand alone unexplained and undefined and as such they are meaningless. They cannot be twisted and contorted into personal knowledge by the agents that the defendants were criminals or were known to be involved in federal law violations as were the defendants in the *Carroll* and *Brinegar* cases.

Not only were the agents unable to tell anything about the cartons prior to the arrest but on subsequent examination it was shown that whereas the agents were looking for and expected to find stolen whiskey the cartons contained no such thing. Moreover, after the agents had opened the cartons and examined the contents they were unable to say what crime, if in fact any at all, had been committed.

In the *Walker* case the evidence clearly showed that the arresting federal agents had personal knowledge given to them by an informer which furnished probable cause to believe a federal felony was being committed. Thus this court held the arrest was valid and the search incidental thereto lawful. Likewise in the *Gilliam* case the federal agents had personal knowledge that the defendant was a bootlegger and they had been furnished with information by an officer that clearly constituted probable cause. It is that sort of direct evidence of personal knowledge that is completely lacking in the case at bar.

The *Bell* case has no application here. There the arresting officers were policemen of the District of Columbia. They stopped the defendant's car after he had pulled away from the curb and had driven some two blocks without lights at 3:30 o'clock in the morning. The officers could have properly arrested the defendant for driving without lights.

street from the Red Top Tavern (R. 18). They got into a car, drove for a few blocks, and parked in an alley between Union and Lowe Streets (R. 18, 19). Petitioner got out of the car, entered a gangway, and returned in a few minutes carrying cartons (R. 19). Petitioner got into the car, with Pierotti driving, and drove away. Later the car was again seen parked at the Red Top Tavern (R. 19). The F.B.I. agents parked across the street from the tavern and waited for the defendants to emerge. Soon the defendants came out of the tavern, got into the same car, and returned to the same alley between Union and Lowe Streets where petitioner entered the gangway and returned carrying cartons (R. 20). Petitioner was observed to walk around the front of the car carrying the cartons and he and Pierotti then drove off (R. 20). The agents met them a few blocks away, the agents being headed north and the defendants south (R. 12). The agents intercepted the car, and waived to them as they approached (R. 12, 20, 21). Petitioner and Pierotti stopped their car. Petitioner got out of the car saying to Pierotti as he did so, "Hold it, it is the G's" and "Tell him he [you?] just picked me up" (R. 21-23, 54). Stadtmiller inquired about the ownership of the car and Pierotti said that he had borrowed it from a friend named "Babe" (R. 24). When asked if they had just been to the Red Top Tavern, petitioner said "No" but that he might have been there that morning. Pierotti said that he "just got off work at 2:30" (R. 24).

As Stadtmiller walked alongside of the car, he noticed that there were cartons in the car with an

Apart from the fact that the record in the *Carroll*, *Husty* and *Brinegar* cases clearly disclosed evidence of personal knowledge of the arresting federal agents that each defendant was a bootlegger and engaged in illegal trafficking of liquor in violation of The National Prohibition Act and thereby had probable cause sufficient to search their respective automobiles, Mr. Justice Jackson speaking for the court in *U. S. v. Di Re*, 1948, 332 U.S. 581, points up the clear distinction between such cases and the one here when he speaks on page 584 as follows:

> "The belief that an automobile is more vulnerable to search without warrant than is other property has its source in the decision of *Carroll* v. *United States*, 267 U.S. 132. That search was made and its validity was upheld under the search and seizure provisions enacted for enforcement of the National Prohibition Act and of that Act alone."

Again we say there is no evidence of personal knowledge by the federal agents here that the defendants or either of them could have been suspected of interstate shipment thefts at the time the path of their car was intercepted by the agents and they were arrested and taken into custody. It was at that time probable cause had to exist for when their car was stopped by the agents intercepting its path and driving directly in front of them and making a head-on stop I think the arresting officers were then in the position of an officer who has entered a home; *i.e.*, the search at that time had to be valid and could not be saved by what it later uncovered.

In my opinion the search of defendants' automobile was in clear violation of the Fourth Amendment. I would, therefore, reverse and remand with instructions to sustain the motions to suppress.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago 10, Illinois

Thursday, October 2, 1958

Before

Hon. F. Ryan Duffy, Chief Judge

Hon. John S. Hastings, Circuit Judge

Hon. W. Lynn Parkinson, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. JOHN PATRICK HENRY & ALBERT RUDOLPH PIEROTTI, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 12306	

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois
Tuesday, November 4, 1958
Before
Hon. F. Ryan Duffy, Chief Judge
Hon. John S. Hastings, Circuit Judge
Hon. W. Lynn Parkinson, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. JOHN PATRICK HENRY & ALBERT RUDOLPH PIEROTTI, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 12306	

It is ordered by this Court that the petition for rehearing filed in the above cause be, and the same is hereby, DENIED.